IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

LAND APPEAL NO. 84 OF 2022

(C/F Land Case Application No. 8 of 2022 before the District Land and Housing Tribunal for Kondoa at Kondoa)

IDD RAMADHANI DUDU .....APPELLANT

Versus

HADIJA JUMA NGOLO.....RESPONDENT

JUDGMENT

Date of Last Order: 10th August 2023.
Date of Ruling: 1st September 2023.

MASABO, J:-

The appellant herein filed Application No. 8 of 2022 before the District Land and Housing Tribunal of Kondoa at Kondoa against the respondent. He claimed to be the lawful owner of Plot No. 176 Block 'B' measuring 600sqm located at Bicha Magodown at Kondoa town council. He alleged that he was allocated the land by Kondoa District Council in 2011. But, on 15th February 2022, the respondent trespassed into 100sqm of the said land and erect a building claiming that the land is hers. Asserting his right over the suit land, he prayed for a declaratory order that he is the rightful owner of the suit land; an order for cancelation and nullification of the alleged reallocation of the suit land to the respondent; an order of vacant possession against the respondent; permanent injunction against the respondent and her agents restraining them from entering or transferring the ownership of suit land and costs of the suit.

The respondent disputed the allegation and claimed ownership of the suit land. The application proceeded to a trial at the end of which the tribunal had to determine who, between the appellant and the respondent is the lawful owner of the suit land was and the reliefs to which each party was entitled to. The suit ended in the respondent's favour after the trial tribunal declared her the lawful owner of the suit plot. Aggrieved, the appellant has knocked the doors of this court with an appeal based on the following grounds;

1. That the District Land and Housing Tribunal erred in law and fact for contradicting itself in its decision by stating on one side that the disputed land was not completely surveyed by the authority (Kondoa Town Council) meaning to say that the suit land was recovered by the original owner, but on the other side the Chairman stated that the Authority of Kondoa Town Council granted the building permit to the respondent describing the land Plot No. 176 Block 'B'.

2. That, the District Land and Housing Tribunal erred in law and fact to ignore all documentary evidence adduced by the appellant without any genuine reasons while the appellant herein stated further that all those documents were obtained from authority therefore, the trial tribunal was at liberty to call the authority to prove the confusion of allowing the appellant to pay land rent and other fees on the land said not be surveyed at the time to grant building permit to the respondent on the same disputed land.

3. That, the District land and Housing tribunal erred in law and fact for being biased in deciding the matter in favour of the respondent herein basing and relying only on oral evidence adduced by the respondent and her witness then ignored documentary evidence adduced by the appellant herein which is primary evidence.

4. That, the District Land and Housing Tribunal erred in law and fact by relying into contradictory evidence (building permit) adduced by the respondent without assessing on how much such permit was obtained by the respondent from the authority.

5. That, the district land and housing tribunal erred in law and fact for being biased to decide the case blindly disregarding that he is the client registered in the system of the Authority and he has been paying the land rent since 2012 while the respondent is not recognized anywhere but only holding the building permit.

6. That, the District Land and Housing Tribunal erred in law and fact for failing to satisfy itself on the point of documents proving the ownership of the respondent to the suit land against the appellant.

On 3rd July 2023 the parties appeared before me in person and unrepresented whereby they consented that the hearing proceeded in writing. Both filed their submissions on time as per the schedule of filling of written submissions.

Submitting on grounds of appeal, the appellant stated that the trial tribunal erred in law and fact for contradicting itself in its decision by stating that the disputed land was not surveyed by the authority and that it belonged to the original owner whereas on the other hand it held that the said authority granted building permit to the respondent. He argued that, the trial tribunal merely considered the building permit by the respondent while it ignored the evidence adduced by the appellant showing that he made different payment on the said land. It was his

argument that the contradictions were contributed by the trial tribunal's act of not visiting the *locus in quo*. Had the trial tribunal visited the locus in quo such ambiguity could not have happened. In supporting his submission, he cited the case of Said **Mnyangule vs. Maimuna S. Mkwata,** Land Appeal No. 90 of 2016 (unreported).

He submitted further that the trial tribunal erred in ignoring all document adduced by him without any genuine reason whereas the same were obtained from the authority and proved that he is the owner of the suit land. He proceeded that, if there was any confusion as regards these documents, the trial tribunal was at liberty to call the authority to clarify on why the appellant was allowed to pay land rent, land tax and other fees on the land allegedly not surveyed and at the same time granted building permit to the respondent. It was his argument that the tribunal ought to have adhered with the principle of fair decision upon evidence adduced before it. He fortified this argument with the case **of Goodluck Kyando vs R** [2006] TLR 363.

It was his further submission that, the trial tribunal erred in holding that the appellant did not call material witness to testify on the credibility of the document. This was materially wrong considering that the respondent did not call a witness from Kondoa District Council to testify on the building permit she tendered. He proceeded that, his evidence ought to have attracted more weight considering that he is registered in the system of the Authority and he has been paying land rent since 2012 while the respondent is registered nowhere but she has building permit. It was his submission that because he is registered in the system, paid Tshs

10,000/= as an application form and Tshs 500,000/= for the plot and obtained a building permit, he is the lawful owner of the suit land and should be declared as such.

In reply, the respondent argued that there are no contradictions whatsoever. The trial tribunal correctly evaluated the evidence adduced by the parties and her evidence which shows that in 2011 the suit land and neighboring land were surveyed by the Kondoa District Council but the process was not concluded as there were no money to compensate the affected people, the respondent inclusive, was found meritorious. The tribunal believed the respondent's evidence that the suit land reverted back to the original owner and that on 17th February 2022 she was given a building permit which was admitted by the trial tribunal as exhibit D1. Therefore, there was no fault as the tribunal believed on this credible evidence as corroborated by the testimony of DW2.

It was her further submission that, the trial tribunal's decision was not solely based on the building permit. It was based on all the evidence adduced by the witnesses in their testimonies and the documents they rendered. On the issue of contradiction of evidence adduced by the parties, it was submitted that the respondent's evidence was free of contradicts whereas the appellant's evidence was full of contradictions. It was amplified that, the appellant while contradicting himself, he testified that, he paid Tshs 10,000/= as an application fee for the plot by the district authority but on the hand, he stated that he paid Tshs 500,000/= as the consideration for buying the same. He further adduced a sale agreement between him and one Iddi Juma Swalehe dated 12th August

2012. In this agreement no description of the land was disclosed, thus it is not clear as to what is the plot number, size and actual location.

Regarding the complaint that the trial tribunal ought to have called a witness from the district council, it was submitted that the lamentations are without merit as the duty to prove that the application form and land receipts tendered by the appellant in court was in deed from the district council, rested on the appellant himself. He was duty bound to call witnesses from the council. His failure to call them draws an inference adverse to the appellant's case that if they were to testify, they could have given evidence contrary to his interest hence he omitted them. It was argued that, in an adversarial system, the duty to prosecute, defend the case and provide proof thereto, is on the parties not the tribunal which should be a neutral party. The tribunal's duty is to weigh the evidence adduced by the parties and determine the matter, a duty which the tribunal in the present appeal ably discharged and delivered its judgment.

On the complaint that there was confusion as to how the authority allowed the appellant to pay land rent and other fees on the suit land and at the same time grant a building to the respondent, it was argued that, there was no confusion as the appellant referred to Kondoa District Council whereas the evidence adduced by the respondent referred to Kondoa Town Council, the two being two different authorities. The suit land is situated at Kondoa Town Council as per the appellant's application under paragraph 6(A) which describes the suit land. She argued that according to section 122 of the Local Government (District Authorities) Act, Cap. 287 when read together with its first schedule the local authority shall perform

its function within its area of jurisdiction. Thus, her building permit was credible as it was obtained from the respective authority as opposed to the authority from which the appellant obtained his documents. Lastly, it was argued that, the trial tribunal was right to accord weight to the oral evidence adduced by the respondent as oral evidence is legally valuable just as documentary evidence as section 61 of the Law of Evidence Act, Cap. 6 R.E 2022. She added that, the appellant was given chance to cross examine the respondent and her witness but she did not use that chance to ask as to how the respondent obtained the building permit, hence suggesting that he found the building permit correct.

Rejoining on the issue that Kondoa District Council had no jurisdiction over the suit land and the respondent's reference to section 122 of the Local Government (District Authorities) Act, Cap. 287, the appellant argued that the argument is misplaced and the provision is wrongly interpreted as the suit land was designated Plot 176 Block B at Bicha Magodown in 2011 when Kondoa District Council was a Government Authority and had jurisdiction over the disputed area. In fortification he appended an attachment to his rejoinder purporting to show that Kondoa District Council had jurisdiction over the suit land. This marked the end of the submissions by the parties.

I have keenly read the submissions presented by the parties as well as the records of the trial tribunal and I will now proceed to determine the appeal. This is being a first appeal, it is tantamount to a rehearing of the case meaning that, this court is duty bound to reassess the evidence on record to ascertain whether the anomaly pointed out in the grounds of appeal exist and ultimately make its independent finding. As I embark on

this issue, let me state from the outset that I have noted with great concern that the appellant has appended some documents to his rejoinder submission. I shall accord no weight to these documents as the appending of documents to written submissions is contrary to the law and practice.

Back to the merit of the appeal, all the six grounds of appeal set out by the appellant in his memorandum of appeal revolve around the failure of the trial court to properly evaluate, assess and analyze the evidence as whole and in so doing, wrongly dismissed the appellant's claim while had proved to the required standard that he is the rightful owner of the suit property. It is a trite law that in civil litigations, the burden of proof lies on the party who desires a court to believe him and pronounce judgment in his favour. Section 110 provides as follows:

> 110. Whoever desires any courts to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those fact exist.

This is cardinal principle of law and has been echoed in numerous cases including in **Hemedi Said vs Mohamed Mbilu** [1984] TLR 113 and in **Antony M. Masanga vs. Penina (Mama Mgesi) and Lucia (Mama Anna),** Civil Appeal No. 118 of 2014 [2015] TZCA 556 (TANZLII). In the latter case, the Court of Appeal while reiterating this principle lucidly stated that;

> It is a common knowledge that in civil proceedings the party with legal burden also bears the evidential burden and standard in each case is on the balance of probabilities.

That in this case, the appellant being the one asserting to be the lawful owner of the suit land, he was duty bound to prove its assertion to the required standards, that is, proof on the balance of probabilities. It is in line with principle, the appellant testifying as PW1 told the trial tribunal that in 2011, he lodged her application for a plot before Kondoa District Council whereby he paid an application fee of Tshs. 10,000/=. Later on he paid Tshs. 500,000/= being consideration of the said plot after which he was shown the suit land as his plot and he described it as measuring 600M2, to the north bordering Plot No. 175, Block "B" at Bicha Magodown, South- Kondoa Road-Bicha Round about, to the East bordering a road to TAG church and to the west- Plot 174 Block 'B'. He testified further that after being allocated the suit land, he has been paying rent and has done so for all the 12 years after he was allocated the same and was enjoying peaceful occupancy until on 2021 when the respondent trespassed into it claiming to be its lawful owner. He stated further that the appellant fraudulently used his plot number to obtain a building permit. He also added that, before the land was allocated to him it was owned by his witness, one Idd Jumanne Swalehe (PW2) and that the said Idd Jumanne Swalehe was paid his compensation.

In further proof, he tendered various documents to wit; receipt No. 407637 issued by Kondoa District Council on 12/8/2011, Land rent assessment of 7/8/2018, payment through GEPG of 31/12/2020 and a letter from street office to Land Officer dated 01/11/2021. All these documents were admitted as exhibit P1 collectively. In corroboration, PW2 testified to have been the original owner of the suit land and that, after the same was surveyed by the District Council, he was not given

compensation so he entered into agreement with persons who were allocated such plots, the appellant herein inclusive. He stated that, the appellant compensated him although he did not recall the actual money paid to him by the appellant as compensation.

On her part, the respondent testifying as DW1 stated that she had since 1985 owned the suit land having obtained the same from Mzee Mohamed Kidunda. Later on, Kondoa District Council surveyed the suit land and the neighboring land with the view of re-allocating the same to different persons but it failed to compensate the original owners hence they retained ownership of the same. Desirous of developing her land, she applied for a building permit which was issued to her (Exhibit D1). Her testimony was corroborated by DW2, Ismail Shaban Kiberenge, an owner of a land neighbouring the suit land who told the court that, he obtained his land in 1982 from Mzee Mohamed Kidunda, the same person from whom the respondent obtained the suit land and that, in 1985, the respondent obtained the suit land from the said Mzee Mohamed Kidunda and that she has since then been the owner of the same. He also corroborated DW1's story that in 2011, the suit land and neighbor parcels of land were surveyed but the District Council failed to compensate them hence they retained ownership of their respective parcels of land. After considering the evidence, the chairman and assessors came to a concurrent view that the appellant failed to prove his claim hence dismissed his claims with costs and declared the respondent the lawful owner of the suit land.

On the first ground of appeal, the appellant has argued that the judgment of the trial tribunal is contradictory on whether or not the suit land was surveyed or not. He appears to suggest that, if at all the survey did not come to an end, the suit land could not have been assigned a plot number. I respectfully differ with the appellant as I see no contradiction in this point. It would appear that the appellant is confusing two things, that is, the survey of the suit land and the re-allocation of the same to a new owner. What is vividly clear in the respondent's evidence is that, the survey was completed but no reallocation was done as the District Council had no money to compensate them for the improvements thereon. This being the case, it is unsurprising why the suit land had a plot number as the same is assigned at the survey stage, not at the re-allocation stage. In the foregoing, it is with less surprise to have a building permit bearing the plot number.

The argument that the confusion might have been contributed by the trial tribunal's failure to visit the locus in quo is similarly without merit because, much as a tribunal may visit the *locus in quo* should it see a necessity for doing that, there is no law that mandatorily require the tribunal to visit the *locus in quo*. In fact, visiting of locus in quo is sparingly done as such visits are pregnant with the risk of the tribunal assuming the role of witnesses and in so doing, negating its impartiality and ability to fairly determine the dispute as held in **Thadeus Massawe vs. Isidory Assenga, Civil Appeal No. 6 of 2017** [2020] TZCA 365 TANZLII and in **Nizar M.H.Ladak vs. Gulamali Fazal Jan Mohamed** [1980] T.L.R. 29. Therefore, the trial tribunal cannot be faulted for not visiting the locus in quo. The first ground of appeal fails.

In the second, third, fourth, fifth and sixth grounds of appeal, the appellant has challenged the tribunal for believing in the oral testimony and documentary exhibit tendered by the respondent as against the testimonies and documentary evidence tendered by the appellant while, they all seems to have originated from the same authority, the respondent did not explain how he obtained the building permit, the evidence of her witnesses were contradictory and tribunal bothered not to summon a witness from the Kondoa District Council to clarify on the documents tendered by the parties as exhibits. Needless to emphasize what I have stated earlier as regards the appellant's legal duty to prove his case. As he claimed ownership of the suit land, he was duty bound to produce evidence to substantiate his ownership and his evidence ought to be more probable compared to the respondent's. The blame he has casted on the trial tribunal for not calling a witness from the District Council is a lucid misconception as the trial tribunal being an impartial obiter has no legal duty to summon its own witnesses. The duty to bring witnesses rests on the parties and in this case, it was upon the appellant to bring such a witness. Thus, he has none but himself to blame for such a material omission. It is also a cardinal principle of law, as correctly argued by the respondent that, all material witnesses must be summoned and the omission to summon them might attract an inference adverse to the party who ought to have called such witness.

As regards the variance of the respondent's evidence, in my scrutiny of the record I did not find any material variation in the respondent's evidence. Her testimony and that of her witness who testified as DW2 had cohesion. They all stated how the respondent obtained the suit land and

narrated about the futile attempt to acquire and re-allocate the land and the retention of the land by the original owners after the District Council failed to compensate them. To the contrary and as observed by the trial tribunal, the appellant's evidence was contradictory. Whereas he pleaded that he was allocated the land by the District Council, his evidence left a million questions as to whether he was allocated the suit land by the District Council or purchased the same from PW2. No letter of offer was produced to show that the plot was allocated to him. The payment receipts for Tshs 500,000/= and Tsh 10,000/=has no indication of the plot allegedly allocated to him. As the payment of Tshs 500, 000/= was in consideration of the suit plot, one would have expected the receipts to clearly indicate so but it is totally silent. Salting it all is the agreement executed by the appellant and his witness, PW2 by which PW2 purporting to be the original owner of a parcel of land at Bicha- Kilimani relinquished his ownership to the appellant and permitted him to develop the said land. Just at the receipts, this agreement does not bear any indication that the land subject to it is the suit land herein. In fact, the suit purported to be subject of the agreement is at Bicha Kilimani while the suit land is at Bicha Magodown which implicitly shows that the two are different.

Concrete evidence was required to resolve these variations but none was present save for the land rent assessment which does not suffice as proof of ownership because as held in the case of **Salum Mateyo vs. Mohamed Mateyo** [1987] TLR 111 where this court held that:

> Proof of ownership is by one whose name is registered. in most instances proof of ownership of land is by letter of offer or certificate of title and the onus of proof of

ownership lies on that party (in this suit the plaintiff) who has alleged this fact.

Therefore, since the appellant asserted that the suit land was surveyed and it is Plot number 176 Block B, measuring 600sqm located at Bicha Magodown, he ought to have tendered a letter of offer or certificate of title registered in his name but he tendered none. Thus, there is nothing to fault the trial tribunal. The 2nd, 3rd, 4th, 5th, and 6th grounds of appeal all fail as they are seriously wanting on merit.

That said and done, this court finds no merit in the appeal warranting reversal of the judgment and decree of the trial tribunal. In the end, the appeal is dismissed with costs.

DATED at **DODOMA** this 1st day of September, 2023.

J.L. MASABO

JUDGE